

Order 2003-11-6  
Served: November 13, 2003



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 13<sup>th</sup> day of November, 2003

Essential air service at

**BRADFORD, PENNSYLVANIA  
JAMESTOWN, NEW YORK**

**Docket OST-14528  
Docket OST-14950**

under 49 U.S.C. 41731 *et seq.*

**ORDER**

**Summary**

By this order, the Department is terminating the subsidy being paid to Air Midwest at Jamestown and Bradford, effective immediately.

**Background**

By Order 2003-9-2, issued September 5, 2003, the Department selected Colgan Air, Inc., d/b/a US Airways Express, to provide essential air service at Bradford, Pennsylvania, and Jamestown, New York, for a two-year period. That order concluded a carrier selection proceeding that was initiated earlier this year when Air Midwest, d/b/a US Airways Express (Air Midwest),<sup>1</sup> filed 90-day notices under 49 U.S.C. 41734 of its intention to terminate service at the communities.<sup>2</sup> In its notices, Air Midwest stated "the substantial costs resulting from increased federal regulation for regional carriers makes it impossible to continue without Essential Air Service subsidy. The absence of this subsidy requires Air Midwest to advise the Department that scheduled air service will be discontinued."

In response to Air Midwest's notices to terminate service, and in accordance with 49 U.S.C. 41731 *et seq.*, we issued orders requiring Air Midwest to continue to serve the communities and requesting proposals for replacement service, consistent with longstanding program practice.<sup>3</sup>

<sup>1</sup> Air Midwest is a wholly owned subsidiary of Mesa Air Group, Inc., (Mesa). Both Colgan and Air Midwest operate as US Airways Express carriers at the Pittsburgh hub, but in different markets.

<sup>2</sup> Air Midwest filed its notice to terminate service at Bradford on March 14, 2003 and at Jamestown on April 14, 2003.

<sup>3</sup> See Orders 2003-4-3 (Bradford) and 2003-6-11 (Jamestown).

Also, by Orders 2003-6-31, issued June 23, 2003, and 2003-7-8, issued July 7, 2003, we set final subsidy rates for Air Midwest's "hold-in" service, to be effective at the end of the respective 90-day notice periods, until further Department action, while we processed carrier selection cases.<sup>4</sup>

We then selected Colgan Air from among three applicants, as set forth in Order 2003-9-2. Colgan's proposal asserted that, if selected, it would operate in the Jamestown-Pittsburgh and Bradford-Pittsburgh markets as US Airways Express. This assertion was not controverted by any other applicant.

As we do in all cases when a non-incumbent is selected, we stated in the order that we expected Colgan and Air Midwest to coordinate the transition in essential air service responsibilities. After issuance of that order, Colgan informed us that it would be able to inaugurate service at Bradford and Jamestown in roughly 60 to 90 days. When we contacted Colgan recently to determine an expected transition date, we were advised that Colgan could not give us such a date because Air Midwest was refusing to cooperate in such a transition. Specifically, we were advised that – contrary to Air Midwest's representations in its notices to terminate – it was continuing to operate in the Jamestown and Bradford markets as US Airways Express. We were also informed that, under US Airways' code sharing arrangements, Air Midwest retains the exclusive right to use the US Airways code in those markets so long as it continues to operate services in those markets.<sup>5</sup>

In order to seek clarification, we sent a letter (Attachment A) on October 17 to Mesa, the parent company of Air Midwest, asking whether Air Midwest intended to leave Bradford and Jamestown, as it had indicated in its notices, or whether it now intended to stay at the communities on a subsidy-free basis. We requested a response by October 22, but received none.

On October 23, we sent a follow-up letter (Attachment B). In response, on October 24, we received a letter from Mesa (Attachment C). That response is fairly read, for the reasons related below, to indicate that Air Midwest does not intend to leave.

### **Decision**

We have decided to terminate EAS subsidy to Air Midwest to serve Jamestown and Bradford, effective immediately.

Mesa takes the position that Colgan cannot submit a proposal for service to Pittsburgh for these communities as a US Airways code-share carrier because Air Midwest has exclusive rights to the US Airways code in these markets. However, Air Midwest retains the rights to the exclusive use of the US Airways code in these markets only for so long as it continues to serve them. Mesa's argument that Colgan cannot use the US Airways code and its refusal to cooperate in a transition necessarily justifies the conclusion that Air Midwest no longer intends to leave these markets.

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<sup>4</sup> Order 2003-6-31 authorized annual subsidy rates of \$619,018 and \$428,188 for Bradford and Jamestown, respectively, for three nonstop round trips a day to Pittsburgh.

<sup>5</sup> This information was later confirmed to us by representatives of US Airways.

This is further confirmed by Mesa's refusal to provide the Department – as repeatedly requested – a date certain for transition.<sup>6</sup>

Given the foregoing, we will not continue to pay Air Midwest subsidy. We may only authorize subsidy for a community's service when it would otherwise not receive any scheduled air service. Air Midwest's actions indicate that it will continue voluntarily to provide service at these communities, and therefore the Department is no longer "holding in" the carrier. We will also suspend – but not revoke – our selection of Colgan to provide essential air service at Jamestown and Bradford for a period of up to two years. Should Air Midwest decide to terminate service at these communities during this two-year period, and no other carrier has commenced scheduled service in the interim, the service and subsidy levels authorized by Order 2003-9-2 for Colgan would become effective. We believe that this is the most efficient and equitable way to ensure that Air Midwest's reversal of its decision to terminate service to these communities, after failing to be selected for subsidy, does not adversely affect the communities<sup>7</sup> or the other carriers in this proceeding.

We also note that if Air Midwest decides to suspend service at these communities, it is still obligated under the terms of Order 2003-6-31 to work with Colgan to ensure a smooth transition and to contact all passengers to inform them of the proposed suspension and simultaneous inauguration of service, and to assist them in arranging alternate transportation.<sup>8</sup>

This order is issued under authority delegated in 49 CFR 1.56a(f).

**ACCORDINGLY,**

1. The Department terminates the final rates of compensation for Air Midwest, d/b/a US Airways Express, for the provision of essential air service at Bradford, Pennsylvania, set by Order 2003-6-31, effective on the issue date of this order;
2. The Department terminates the final rate of compensation for Air Midwest, d/b/a US Airways Express, for the provision of essential air service at Jamestown, New York, set by Order 2003-7-8, effective on the issue date of this order;

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<sup>6</sup> Air Midwest's recent actions in this proceeding are troubling in that they fail to meet the Department's expectations that carriers will provide timely and direct responses to requests for information and cooperate fully in service transitions. The Department expects prompt and direct responses to staff inquiries and full cooperation in service transitions. Failure to provide such cooperation has resulted in the unnecessary expenditure of time and resources by the Department and perhaps the other carrier applicants and the communities.

<sup>7</sup> During the carrier selection proceeding, neither community supported the selection of Air Midwest.

<sup>8</sup> Order 2003-9-2 at page 4.

3. These dockets will remain open until further order of the Department; and
4. We will serve copies of this order on the mayors and airport managers of Bradford, Pennsylvania, and Jamestown, New York, Air Midwest, Colgan Air, and CommutAir.

By:

**MICHAEL W. REYNOLDS**  
Acting Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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on the World Wide Web at <http://dms.dot.gov>*

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CORRESPONDENCE



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

DEPT. OF TRANSPORTATION  
DOCKETS  
100 Seventh St. S.W.  
Washington, D.C. 20590

2003 OCT 17 P 3:20

OCT 17 2003

Mr. Scott Lyon  
Vice President of Planning  
Mesa Air Group, Inc.  
410 North 44<sup>th</sup> Street  
Suite 700  
Phoenix, AZ 85008

021-03-14950-20

021-03-14528-29

Dear Mr. Lyon:

I am writing to seek clarification as to Mesa's intentions with respect to air service at Jamestown, New York, and Bradford, Pennsylvania. As you know, Mesa, on behalf of Air Midwest, filed notices to suspend service at both communities earlier this year, stating that "...the substantial costs resulting from increased federal regulation for regional carriers makes it impossible to continue without Essential Air Service subsidy. The absence of this subsidy requires Air Midwest to advise the Department that scheduled air service will be discontinued."

As you also know, in response to your notices to suspend service, we issued orders requiring Air Midwest to continue to serve the communities and requesting proposals for replacement service, consistent with longstanding program practice. We then selected Colgan Air from among the three applicants, as set forth in Order 2003-9-2. Carrier transitions are expected to occur 60-90 days after a Department decision. When we contacted Colgan Air recently to find out a transition date, we were told that USAirways could not give Colgan such a date because Air Midwest had not yet determined an exit date. We find this highly unusual, given that the Department's decision selecting Colgan was announced six weeks ago.

Please let me know by October 22 if Air Midwest has changed its mind and now intends to stay on a subsidy-free basis at Jamestown and Bradford or, if not, a date certain for a transition to Colgan Air.

Thank you in advance for your prompt attention to this matter.

Sincerely yours,

*Dennis J. DeVary*

Dennis J. DeVary, Chief  
EAS Program  
Office of Aviation Analysis

✓ cc: Office of General Counsel  
Dockets 2003-14950 and 2003-14528

257679



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

DEPT. OF TRANSPORTATION  
DOCKETS

400 Seventh St. S.W.  
Washington D.C. 20590

2003 OCT 24 A 10:12

October 23, 2003

Mr. Scott Lyon  
Vice President of Planning  
Mesa Air Group, Inc.  
410 North 44<sup>th</sup> Street  
Suite 700  
Phoenix, AZ 85008

OST-2003-14328-30  
OST-2003-14450-21

Dear Mr. Lyon:

On October 17, we wrote to you seeking clarification as to Air Midwest's intentions with respect to air service at Jamestown, New York, and Bradford, Pennsylvania. Specifically, since Air Midwest had not yet arranged a transition date with Colgan Air, we asked that you inform the Department whether the carrier has changed its mind and now intends to stay on at the communities on a subsidy-free basis or, if not, a date certain for a transition. We requested a response from you by October 22. In a conversation with Mr. Jonathan Ornstein, also on October 17, I received a commitment from him that a formal response would be forthcoming by the October 22 deadline.

As of this date, the Department has received no response from Mesa or Air Midwest.

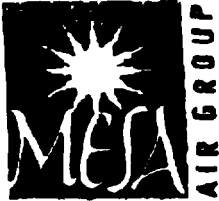
This letter is to advise you that, if no response to our request is received by this office by 4:00 P.M. EDT, tomorrow, October 24, we will consider that non-response as an affirmation that Air Midwest does not intend to terminate service at Bradford and Jamestown, and will take action accordingly.

Sincerely yours,

*Dennis J. DeVany*  
Dennis J. DeVany, Chief  
EAS Program  
Office of Aviation Analysis

cc: Office of General Counsel  
Dockets 2003-14950 and 2003-14528

257713



DEPT OF TRANSPORTATION  
RECEIVED  
2003 OCT 24 P 3:12

October 24, 2003

Via FedEx & Facsimile

OST-2003-14528-31

OST-2003-14950-22

Dennis J. DeVany  
Chief, Essential Air Service Division  
Office of Aviation Analysis, X-53  
Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Dear Mr. DeVany:

In response to your letters dated October 17th and 23rd seeking clarification of Mesa's intentions with respect to air service to the communities of Jamestown, NY and Bradford, PA, our response remains unchanged from the Company's initial conversations with you on this matter.

Your letter quotes language from our request to suspend service that appears to be suggestive that it is our desire to terminate service. Quite the contrary - this is the language used by the DOT to justify the higher rates incurred by carriers providing essential air service. Further, it is the DOT that requires language stating that in order for a carrier, in this instance, to generate subsidized service to a community, that carrier must file a notice to suspend service. That is the process dictated by your agency and it is quite misleading to communities who read that language and believe that the incumbent carrier arbitrarily wants to terminate service to a community.

With respect to your contact with Colgan to determine a transition date, their response to you is consistent with our discussions with your office. US Airways cannot provide Colgan with a date because the code on those routes is contractually obligated to Mesa. We were very surprised that Colgan represented to the community that it would be able



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Dennis J. DeVany  
October 24, 2003  
Page 2

to offer US code-share service on these routes when it did not have the contractual right to do so. If Colgan does not have the ability or plans to offer this service without the US Airways code, we request that the Department reconsider its award to Colgan.

If you have any questions, please do not hesitate to contact me.

Sincerely,

MESA AIR GROUP, INC.



Michael Lutz  
President and Chief Operating Officer

cc: Scott Lyon, Vice President, Planning  
Greg Stephens, President, Air Midwest, Inc.  
Office of General Counsel  
Dockets 2003-14950 and 2003-14528